

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MILTON HUNTER,

Petitioner,

v.

DEBRA SCUTT,

Respondent.

Case No. 03-CV-71711-DT

HONORABLE DENISE PAGE HOOD

**ORDER RE: CERTIFICATE OF APPEALABILITY
AND APPLICATION TO PROCEED
WITH AN APPEAL WITHOUT PREPAYMENT OF FEES AND COST**

On July 28, 2005, the Court issued an Order denying a Petition for Writ of Habeas Corpus. Petitioner filed a Notice of Appeal on August 23, 2005, along with an Application to Proceed with an Appeal Without Prepayment of Fees and Costs on appeal.

Before Petitioner may appeal the Court's dispositive decision denying his habeas petition, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). The Court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The substantial showing threshold is satisfied when a petitioner demonstrates "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When a prisoner's habeas corpus petition is denied on procedural grounds, a certificate of appealability "should issue . . . if the prisoner shows, at least, that jurists of reason would find it

debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.*

The Court dismissed the petition based on the merits of Petitioner’s habeas claims. After reviewing the Court’s Order, the Petitioner’s Notice of Appeal and Application to Proceed with an Appeal Without Prepayment of Fees and Costs, the Court finds that Petitioner has not shown that reasonable jurists would find the Court’s assessment of the constitutional claims debatable or wrong or that the Court’s findings of facts and conclusions of law are debatable among jurists and that the issues raised in the habeas petition deserve further proceedings.

Accordingly, for the reasons set forth above and in the Court’s July 28, 2005 Order dismissing the Petition,

IT IS ORDERED that a Certificate of Appealability not issue in this case and Petitioner’s Application to Proceed with an Appeal Without Prepayment of Fees and Costs (**Docket No. 31, filed August 23, 2005**) is DENIED.

/s/ DENISE PAGE HOOD

DENISE PAGE HOOD

United States District Judge

DATED: October 17, 2005